

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/830,121

**Applicant(s)**

HABATJOU, JACQUES

**Examiner**

Jason J. Boeckmann

**Art Unit**

3752

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: 8, 18, 19, 35 and 39.  
Claim(s) rejected: 1, 3-7, 9-17, 20-22, 25-34, 36-38 and 40-46.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Len Tran/  
Supervisory Patent Examiner, Art Unit 3752

/J. J. B./  
Examiner, Art Unit 3752

Continuation of 11, does NOT place the application in condition for allowance because: See the final rejection of 8/19/2008.

Regarding the applicant's rejections of claims 1-4, 5-7, 9-17, 43 and 44, the applicant argues the combination of the device of Schillig with the device of Rookard. However, it is noted that the examiner respectfully disagrees. For example, the applicant argues that the spike tube 4 will interfere with the baffles of Rookard and therefore destroy the function of the combination. However, as shown in figure 2, the spiked tube 4 does not penetrate into the container itself, it merely stays inside the valve (6) and is complete surrounded by member 17. How can the spike member interfere with the baffles of Rookard if the spike tube is completely surrounded by member 17 when the container (3) connected to the gun (1). The 103 rejection of the final office action merely adds baffles of Rookard to the inside of the container (3) of Schillig, in order to prevent sloshing. Regarding the addition of the Coffee reference to substitute the flat disk shaped valve (14) of Schillig for the ball valve of Coffee, it is noted that the flat disk valve (14) is moved from a closed position to an open position, when the container (3) is on the gun (1), by member 4 and biased to a closed position by member 15, when the container is removed from the gun. The ball valve of Coffee works in a similar manor. In Coffee the ball valve is opened by member 47 when the container is on the gun, and closed by member 44 when the container is removed from the gun. The rejection for claim 3 simply replaces the disk valve (14) of Schillig, with the ball valve (42) of Coffee, leaving everything else of Schillig in tact.

Regarding the applicant's rejections of claim 20, the applicant argues that the Krautzberger reference is not capable of receiving a vector gas supply. However, it is noted that the examiner respectfully disagrees. The claim language states "a housing for receiving a vector gas supply," and it is noted that the device of Krautzberger receives its vector gas supply via tube 6b (line 30). The compressed air is being considered the vector gas supply and when the compressed air is inside the housing of the gun, the gun has received the compressed air. Therefore, when the compressed air enters the housing, the housing has received the vector gas supply. Nowhere does the claim state that the vector gas supply must be inside the housing. The gun is connected to a vector gas supply and therefore it receives the vector gas supply.

Regarding the applicant's rejections of claim 21-34, 36-38, 40-42, 45 and 46, the applicant argues that the combination of Krautzberger and Bara does not show a "dispenser valve being secured to the pressurized receptacle and being triggered by tilting a control rod." However, the examiner respectfully disagrees. The examiner is considering the element, shown in the examiner's marked up figure attached, to be the control rod which is tilted to move the valve member 20 when the trigger 15 is pulled. When the control rod is tilted, the dispensing valve opens as well as the adjustment valve. It is also noted that since the pressurized receptacle of Bara is secured to the spray gun, and the dispensing valve is part of the spray gun, then the dispensing valve is therefore also secured to the pressurized receptacle.